

**RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
BUREAU OF ENVIRONMENT
DIVISION OF AIR POLLUTION CONTROL**

**CHAPTER 1200-3-17
CONFLICT OF INTEREST**

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1200-3-17-.01 PURPOSE AND INTENT.

- (1) It is the purpose of this Chapter to address a conflict of interest as described in the Clean Air Act as amended (42 USC 7401 et. seq. November 15, 1990). Conflict of interest described at 42 USC Section 7428 is addressed in Rule .02 of this Chapter. Conflict of interest described at 42 USC Section 7429(e) is addressed in Rule .03 of this Chapter.

Authority: T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed July 5, 1996; effective September 18, 1996.

1200-3-17-.02 CONFLICT OF INTEREST ON THE PART OF THE BOARD AND TECHNICAL SECRETARY.

- (1) Definition - A “conflict of interest” occurs when a Board member or the Technical Secretary takes an action in the performance of their duties that singularly benefits a source when the Board member or the Technical Secretary has a significant portion of their personal income derived from the operations of said source.
 - (a) The term “significant portion of personal income” shall mean any one or more of the following situations as it relates to the personal income of a Board member or Technical Secretary:
 1. When the Technical Secretary or the Board Member receives more than five thousand dollars (\$5,000) annually in investment income from the source. Said investment is limited to those that arise from the purchase of shares of stock in the source that were purchased on the open market and generally available to any person at that price.
 2. When the Technical Secretary or Board Member receives more than one hundred dollars annually (\$100) due to a private investment made in the source. Said private investment is one where the purchase of stock or interest in a partnership was made directly with the source and such opportunity was not generally available to the public as a whole.
 3. When the Technical Secretary or Board Member receives a salary in any amount from the source for services rendered.
 4. When the Technical or Board Member sells or is about to sell property or equipment to the source. For the purposes of this part, equipment does not

(Rule 1200-3-17-.02, continued)

include consumer goods that are offered to the public at the same price offered to the source.

5. When the Technical Secretary or Board Member buys or is about to buy property or equipment from the source. For the purposes of this part, equipment does not include consumer goods that can be purchased by the public at the same price the source offered to the Technical Secretary or Board Member.
6. When the Technical Secretary or Board Member has taken out a loan from the source in any amount unless:
 - (i) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
 - (ii) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
- (b) The actual or potential receipt of penalties, judgments, grant awards, or fees by the State of Tennessee as a result of promulgated rules, orders by the Technical Secretary, Board orders, judgments awarded in a court of law, or grant applications to government or private entities shall not identify the State of Tennessee as a source as that term is used in 1200-3-17-.02(1). If a specific case involves a source of pollution owned or operated by state or federal government, the Technical Secretary or Board member shall have a conflict of interest only if a significant portion of his or her income is derived from the operation of that source of pollution.
- (c) For the additional purpose of defining a conflict of interest, the Board recognizes the Department's conflict of interest policy governing Department employees.
- (2) Declaration - Prior to the issuance of a permit, variance or an enforcement order that requires an action on their part, the Technical Secretary or a Board member shall issue a statement that declares any conflict of interest that they may have in the matter. Statements by the Technical Secretary shall be written and delivered to the Chairman or Vice-Chairman of the Board. Statements by Board members shall be verbal and made part of the Board Meeting minutes. No Board Member or the Technical Secretary shall be required to quantify their conflict of interest or make a detailed explanation of their conflict unless they wish to make a detailed disclosure. For the purpose of this Chapter 1200-3-17, a "yes" or "no" declaration is sufficient and that is required only if a conflict of interest is present.
- (3) Rulemaking Exclusion - It is recognized that the Board's make-up is such that certain interest groups are represented by each Board member. To that end, a Board member supporting rule-making for their interest group as a whole will not be viewed as having a conflict of interest for such advocacy. However, industry-specific rule-making that would relax an otherwise general emission standard or procedural requirement for a source that causes a Board member to have a conflict of interest shall be subject to a disclosure of conflict of interest by Board members.
- (4) Procedure When A Conflict of Interest is Encountered -

(Rule 1200-3-17-.02, continued)

- (a) Procedure for the Technical Secretary - In the event that the Technical Secretary has a conflict of interest, his actions in such matters shall be subject to ratification by the Board. The Board shall have the power to affirm, modify or set aside the proposed actions of the Technical Secretary. Upon ratification, the Technical Secretary's action shall become final.
 - 1. Any timelines for action placed upon the Technical Secretary or Department in Division 1200-3 shall be extended by the amount of time needed to bring the proposed action to the Board for review and ratification. Deadlines for action imposed by federal regulations of the United States Environmental Protection Agency are not eligible for such extension. Similarly, deadlines specifically imposed in Tennessee statutes are not eligible for such extension.
- (b) Procedure for Board Members - In the event that a Board member has a conflict of interest, the following procedures shall apply:
 - 1. If a Board member has a conflict of interest as that term is defined in this Chapter 1200-3-17, the Board member shall answer "abstain" when voting in any roll call vote upon a matter before the Board for a decision.

Authority: T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed July 5, 1996; effective September 18, 1996.

1200-3-17-.03 CONFLICT OF INTEREST IN THE PERMITTING OF MUNICIPAL SOLID WASTE INCINERATION UNITS.

- (1) No permit for a solid waste incineration unit that combusts municipal waste shall be issued by the Technical Secretary if he is responsible in whole or part, for the design and construction or operation of the unit. In the event that the Technical Secretary faces such a permit decision, the procedures of subparagraph 1200-3-17-.02(4)(a) shall apply to his development of a draft permit for Board ratification.
- (2) No permit for a solid waste incineration unit that combusts municipal solid waste shall be approved or denied by a Board member that is a person responsible in whole or part, for the design and construction or operation of the unit. Any vote by such Board member on such unit shall be answered by "abstain".

Authority: T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed July 5, 1996; effective September 18, 1996.